

**Tax Type:** Income Tax  
**Issue:** Amnesty Eligibility

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	No. 00 IT 0000
	)	
	)	SSN: 000-00-0000
v.	)	
	)	Tax Year 1978 and 1981
	)	
JOHN AND JANE DOE,	)	
	)	
Taxpayers	)	Kenneth J. Galvin
	)	Administrative Law Judge

**Appearances:** Mr. *John Doe* appearing *pro se*; Mr. Ralph Bassett, Special Assistant Attorney General, appearing on behalf of The Department of Revenue of the State of Illinois.

On November 3, 2004, the Illinois Department of Revenue (hereinafter “the Department”) issued LTR-405’s, “Amended Income Tax Letters,” for tax years 1978 and 1981 to *John* and *Jane Doe* (hereinafter “taxpayers”). In the Amended Income Tax Letter for 1978, the Department advised the taxpayers that their account showed an overpayment of \$143 plus interest of \$339.43, based on taxpayers’ January 28, 2004 filing of an Amended Individual Income Tax Return. In the Amended Income Tax Letter for 1981, the Department assessed taxpayers additional tax due of \$1,937 plus interest on

the tax due of \$3,965.16, also based on the taxpayers' January 28, 2004 filing of an Amended Individual Income Tax Return. Dept. Ex. Nos. 1-4. On December 21, 2004, taxpayers filed a timely protest and requested a hearing, which was held on July 21, 2006. At the evidentiary hearing, Mr. *Doe* stated that he did not dispute the 1978 overpayment of \$143 or the 1981 assessment of tax due of \$1,937. Tr. pp. 10-11. The only issue disputed and the only issue left for hearing was whether taxpayers were eligible to participate in the Illinois Tax Delinquency Amnesty Act. (P.A. 83-1428, effective October 1, 1984) for the 1981 assessment of tax due of \$1,937 plus interest. Tr. pp. 10, 17. Following a review of the testimony and the evidence presented at the hearing, it is recommended that the 1981 assessment of tax plus interest is not eligible for amnesty under the Illinois Tax Delinquency Amnesty Act of 1984 and that the Department's Amended Income Tax Letters for 1978 and 1981 should be affirmed.

**Findings of Fact:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the Amended Income Tax Letters dated November 3, 2004, advising taxpayers of an overpayment of \$143 for 1978 and assessing tax due of \$1,937 for 1981. Tr. pp. 9-13; Dept. Ex. Nos. 1 and 2.
2. Taxpayers amended their 1978 and 1981 returns on January 28, 2004. Dept. Ex. Nos. 3 and 4.

**Conclusions of Law:**

Mr. *Doe* testified as follows: Taxpayers filed timely Illinois Income Tax Returns for 1976 through 1984. "After these returns were filed, the Internal Revenue Service ("IRS") made claims that I was involved in certain investments and that these

investments produced enormous amounts of income ... and that I should be liable for tax on those investments....” Tr. p. 15. In 2003, approximately 25 years after the initial dispute arose, taxpayers and the IRS reached an agreement on the issues involved. Tr. p. 16. Taxpayers amended their 1978 and 1981 returns on January 28, 2004. Dept. Ex. Nos. 3 and 4.

Taxpayers’ Amended Individual Income Tax Return for 1981 shows an adjusted gross loss as originally filed of \$62,242.43. The corrected adjusted gross income for 1981 was \$79,320. Dept. Ex. Nos. 3 and 4. At the evidentiary hearing, Mr. *Doe* testified that the disputed IRS claims were “erroneous.” Tr. pp. 18, 19. He was then asked, if the IRS claims were erroneous, “why did you end up owing the State more money.” He responded that there was one investment where the IRS claim was correct. “But I couldn’t determine how much tax was due because of all the other erroneous assertions and that affected the amount of tax.” Tr. pp. 21-22.

The “Illinois Tax Delinquency Amnesty Act” of 1984 (P.A. 83-1428) (hereinafter “The 1984 Act”) was effective on September 16, 1984. Section 3 of The 1984 Act states as follows: “The amnesty program shall be for a period from October 1, 1984 through November 30, 1984.”

The amnesty program shall provide that upon written application by any taxpayer and payment by such taxpayer of all taxes due from such taxpayer to the State of Illinois for any taxable period ending prior to July 1, 1983, plus interest equal to 50% of the interest that would have been owed under the law imposing such tax liability, the Department shall not seek to collect any other interest or penalties which may be applicable ... Failure to pay all taxes due to the State shall invalidate any amnesty granted pursuant to this Act. Amnesty shall be granted for only the taxable period specified in the application

and only if all amnesty conditions are satisfied  
by the taxpayer.

Section 19 of The 1984 Act states that Sections 1, 2 and 3 “are repealed December 1, 1984.”

Taxpayers’ argument for why they are entitled to amnesty is as follows: Taxpayers were unable to file a request for amnesty before 2003 because they were in litigation with the IRS. The IRS was claiming large amounts of tax due, “which would have caused large amounts of Illinois income tax to be due which taxpayers were unable to pay as required by the amnesty provisions.” Had taxpayers been able to acquire the funds to pay the tax, the payments were not recoverable. The 1984 Act contained no provision authorizing claims for credit or refund to recover payments made in connection with any amnesty applications. “All payments made in connection with amnesty applications will be deemed final.” 86 Ill. Adm. Code § 520.110 9(f). “Thus, even if taxpayers could obtain the funds, the State would have been improperly enriched by the payment.” A subsequent amnesty provision (“The 2003 Act”), effective from October 1, 2003 to November 17, 2003 (which taxpayers were ineligible for), also provided that participants in the 2003 amnesty program could not seek or claim refunds. “... [A] limited exception to this rule will be permitted for taxpayers whose refund claims are based upon final determinations of the Internal Revenue Service or the federal courts.” 86 Ill. Adm. Code § 521.105(1). (Taxpayers’ Trial Memorandum, pp. 2-3).

Participation in amnesty under The 1984 Act was purely voluntary on the part of taxpayers. The Act was created by the Illinois Legislature and sets forth specifically that “[A]mnesty shall be granted ... only if all amnesty conditions are satisfied by the taxpayer.” One of the “conditions” of the Act was a specifically set forth time limitation:

“The amnesty program shall be for a period from October 1, 1984 through November 30, 1984.” Another “condition” was that the participating taxpayer pay “all taxes due” plus one-half of the applicable interest. (P.A. 83-1428, Section 3).

In the instant case, taxpayers elected not to participate in amnesty under The 1984 Act. This election cannot be undone 22 years later. The conditions for participation in the program were mandated by statute and this tribunal did not have the authority 22 years ago, nor does it have the authority now, to change those conditions. Additionally, this tribunal cannot grant the taxpayers amnesty under The 1984 Act because Sections 1, 2 and 3 were repealed on December 1, 1984. Furthermore, the taxpayers in the instant case do not have standing to argue that the State would have been “improperly enriched” by their payment under The 1984 Act because they elected not to make a payment under that Act.

In Schmidt v. Dep’t of Revenue, 163 Ill. App. 3d 269 (5<sup>th</sup> Dist. 1987), the court noted that a purpose of The 1984 Act was to create finality with regard to tax assessments. The court noted further that payment of “all taxes due,” as required in Section 3 of The 1984 Act, “means those taxes assessed and due at the time the amnesty application is made.” *Id.* at 273. The State of Illinois’ 2003 Act may have contained a provision that was more favorable to taxpayers in litigation with the IRS. Nonetheless, the Illinois Legislature is free to establish the conditions for these purely voluntary amnesty acts as they see fit at the time of their enactment in order to fulfill the purposes of the Act and to raise the revenue that is needed at that time.

For the reasons stated above, it is recommended that the 1981 assessment of tax plus interest is not eligible for amnesty under the Illinois Tax Delinquency Amnesty Act

of 1984 and that the Department's Amended Income Tax Letters for 1978 and 1981 should be affirmed.

Kenneth J. Galvin  
Administrative Law Judge

October 26, 2006